

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

753J0751

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 170** - 01/28/2004

Introduced by: Senators Bogue, Moore, and Sutton (Duane) and Representatives Gillespie, Bartling, Deadrick (Thomas), and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise the period of time when certain penalties apply
2 for failing to file or pay certain taxes due.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-48.1 be amended to read as follows:

5 10-45-48.1. Any person who:

- 6 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
7 by this chapter is guilty of a Class 6 felony;
- 8 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
9 becomes due is guilty of a Class 1 misdemeanor;
- 10 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
11 records to the secretary of revenue and regulation or his agents for the purpose of
12 examination is guilty of a Class 1 misdemeanor;
- 13 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
14 return is due is guilty of a Class 1 misdemeanor;
- 15 (5) Engages in business as a retailer under this chapter without obtaining a sales tax



1 license is guilty of a Class 1 misdemeanor;

2 (6) Engages in business as a retailer under this chapter after his sales tax license has been
3 revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

4 (7) Willfully violates any rule of the secretary of revenue and regulation for the
5 administration and enforcement of the provisions of this chapter is guilty of a Class
6 1 misdemeanor;

7 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
8 twelve-month period is guilty of a Class 6 felony;

9 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
10 license after having been notified in writing by the secretary of revenue and
11 regulation that the person is a retailer subject to the provisions of the sales and use
12 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
13 person engaging in business as a retailer files an application for a sales tax license
14 and meets all lawful prerequisites for obtaining such license within three days from
15 receipt of written notice from the secretary.

16 For purposes of this section, the term, "person", includes corporate officers having control,
17 supervision of or charged with the responsibility for making tax returns or payments pursuant
18 to § 10-45-55.

19 Section 2. That § 10-45D-14 be amended to read as follows:

20 10-45D-14. Any person who:

21 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
22 by §§ 10-45D-1 to 10-45D-2, inclusive, is guilty of a Class 6 felony;

23 (2) Fails to pay tax due under §§ 10-45D-1 to 10-45D-14, inclusive, within ~~thirty~~ sixty
24 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

- 1 (3) Fails to keep the records and books required by § 10-45D-13 or refuses to exhibit
2 these records to the secretary of revenue and regulation or the secretary's agents for
3 the purpose of examination is guilty of a Class 1 misdemeanor;
- 4 (4) Fails to file a return required by §§ 10-45D-1 to 10-45D-14, inclusive, within ~~thirty~~
5 sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- 6 (5) Willfully violates any rule of the secretary of revenue and regulation for the
7 administration and enforcement of the provisions of §§ 10-45D-1 to 10-45D-14,
8 inclusive, is guilty of a Class 1 misdemeanor; or
- 9 (6) Violates either subdivision (2) or subdivision (4) of this section two or more times
10 in any twelve-month period is guilty of a Class 6 felony.

11 Section 3. That § 10-46A-13.1 be amended to read as follows:

12 10-46A-13.1. Any person who:

- 13 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
14 by this chapter is guilty of a Class 6 felony;
- 15 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
16 becomes due is guilty of a Class 1 misdemeanor;
- 17 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
18 records to the secretary of revenue and regulation or his agents for the purpose of
19 examination is guilty of a Class 1 misdemeanor;
- 20 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
21 return is due is guilty of a Class 1 misdemeanor;
- 22 (5) Engages in business under this chapter without obtaining a contractor's excise tax
23 license is guilty of a Class 1 misdemeanor;
- 24 (6) Engages in business under this chapter after his contractor's excise tax license has

1 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

2 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times
3 in any twelve-month period is guilty of a Class 6 felony;

4 (8) Engages in business under this chapter without obtaining a contractor's excise tax
5 license after having been notified in writing by the secretary of revenue and
6 regulation that the person is a contractor subject to the provisions of the contractors'
7 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
8 if the person engaging in business files an application for a contractor's excise tax
9 license and meets all lawful prerequisites for obtaining such license within three days
10 from receipt of written notice from the secretary.

11 For purposes of this section, the term, "person", includes corporate officers having control,
12 supervision of or charged with the responsibility for making tax returns or payments pursuant
13 to § 10-46A-13.

14 Section 4. That § 10-46B-11.1 be amended to read as follows:

15 10-46B-11.1. Any person who:

16 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
17 by this chapter is guilty of a Class 6 felony;

18 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
19 becomes due is guilty of a Class 1 misdemeanor;

20 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
21 records to the secretary of revenue and regulation or his agents for the purpose of
22 examination is guilty of a Class 1 misdemeanor;

23 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
24 return is due is guilty of a Class 1 misdemeanor;

- 1 (5) Engages in business under this chapter without obtaining a contractor's excise tax
2 license is guilty of a Class 1 misdemeanor;
- 3 (6) Engages in business under this chapter after his contractor's excise tax license has
4 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 5 (7) Violates either subdivision (2) or subdivision (4) two or more times in any
6 twelve-month period is guilty of a Class 6 felony;
- 7 (8) Engages in business under this chapter without obtaining a contractor's excise tax
8 license after having been notified in writing by the secretary of revenue and
9 regulation that the person is a contractor subject to the provisions of the contractors'
10 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
11 if the person engaging in business files an application for a contractor's excise tax
12 license and meets all lawful prerequisites for obtaining such license within three days
13 from receipt of written notice from the secretary.

14 For purposes of this section, the term, "person", includes corporate officers having control,
15 supervision of or charged with the responsibility for making tax returns or payments pursuant
16 to § 10-46B-11.

17 Section 5. That § 10-52A-8 be amended to read as follows:

18 10-52A-8. Any person who:

- 19 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
20 by this chapter is guilty of a Class 6 felony;
- 21 (2) Fails to pay tax due under this chapter within ~~thirty~~ sixty days from the date the tax
22 becomes due is guilty of a Class 1 misdemeanor;
- 23 (3) Fails to keep the records and books required by § 10-52A-9 or refuses to exhibit these
24 records to the secretary of revenue or the secretary's agents for the purpose of

1 examination is guilty of a Class 1 misdemeanor;

2 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
3 return is due is guilty of a Class 1 misdemeanor;

4 (5) Willfully violates any rule of the secretary of revenue and regulation for the
5 administration and enforcement of the provisions of this chapter is guilty of a Class
6 1 misdemeanor; or

7 (6) Violates either subdivision (2) or subdivision (4) two or more times in any
8 twelve-month period is guilty of a Class 6 felony.

9 Section 6. That § 10-33A-17 be amended to read as follows:

10 10-33A-17. Any person who:

11 (1) Makes any false or fraudulent return in attempting to defeat or evade the
12 telecommunications gross receipts tax is guilty of a Class 6 felony;

13 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within
14 ~~thirty~~ sixty days from the date the tax becomes due is guilty of a Class 1
15 misdemeanor;

16 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
17 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;

18 (4) Fails to file a return required by this chapter within ~~thirty~~ sixty days from the date the
19 return is due is guilty of a Class 1 misdemeanor;

20 (5) Engages in business as a telecommunications company under this chapter without
21 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
22 misdemeanor;

23 (6) Engages in business as a telecommunications company under this chapter after the
24 company's telecommunications gross receipts tax license has been revoked or

1 canceled by the secretary is guilty of a Class 6 felony;

2 (7) Willfully violates any rule of the secretary for the administration and enforcement of
3 the provisions of this chapter is guilty of a Class 1 misdemeanor;

4 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times
5 in any twelve-month period is guilty of a Class 6 felony; or

6 (9) Engages in business as a telecommunications company under this chapter without
7 obtaining a telecommunications gross receipts tax license after having been notified
8 in writing by the secretary that the telecommunications company is subject to the
9 provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation
10 of this subdivision if the telecommunications company providing any
11 telecommunications service files an application for a telecommunications gross
12 receipts tax license and meets all lawful prerequisites for obtaining such license
13 within three days from receipt of written notice from the secretary.

14 For purposes of this section, the term, telecommunications company, includes corporate
15 officers having control, supervision of, or charged with the responsibility for making tax returns
16 or payments pursuant to this chapter.